

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
No. 5:07-HC-2177-BR

UNITED STATES OF AMERICA,                     )  
   )  
    Petitioner,                                     )  
   )  
    v.   )  
   )  
JAMES BARTON HORN,                             )  
   )  
    Respondent.                                    )

**ORDER**

This case comes before the court, in part, on respondent's motion (D.E. 61)<sup>1</sup> to exclude psychologist Dale R. Arnold, Ph.D. as a witness in this case on the principal grounds that the court did not appoint him as an examiner pursuant to 18 U.S.C. §§ 4248(b) and 4247(b). The report by Dr. Arnold shows that he did not, in fact, examine respondent. (Arnold Rept. (D.E. 21) 1). He is therefore not an examiner within the meaning of these provisions. Defendant has not otherwise shown grounds requiring the exclusion of Dr. Arnold's report. Respondent's motion is therefore DENIED.

This case is also before the court on the government's motion (D.E. 66) to appoint Dr. Arnold and psychologist M. Lela Demby, Ph.D. as examiners under 18 U.S.C. §§ 4248(b) and 4247(b) as of the commencement of this case on 27 September 2007, *nunc pro tunc*. There are two reports by Dr. Demby of record. The one that was prepared after commencement of this case indicates that she did not examine respondent. (13 Sept. 2010 Demby Rept. (D.E. 18) 1, amended by 20 Sept. 2010 Addendum (D.E. 19)). Assuming without deciding that it is relevant, she also did not examine respondent for the pre-case report. (*Id.* (referring to 27 June 2007 Demby Rept. (D.E. 20)).

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<sup>1</sup> The motion was filed pro se. Respondent's counsel adopted the motion, subject to certain exceptions, by a subsequent notice (D.E. 62).

Therefore, like Dr. Arnold, Dr. Demby is not an examiner of respondent within the meaning of 18 U.S.C. §§ 4248(b) and 4247(b). The government's motion seeking appointment of Dr. Arnold and Dr. Demby under these provisions is accordingly also DENIED.

SO ORDERED, this 18th day of July 2011.



James E. Gates  
United States Magistrate Judge